

BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of }  
DWAIN G. AND MARY M. RICE }

For Appellants: Dwain G. Rice, in pro, per.

For Respondent: Crawford H. Thomas  
Chief Counsel

Peter S. Pierson  
Associate Tax Counsel

**OPINION**

This appeal is made pursuant to section 19059 of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claim of Dwain G. and Mary M. Rice for refund of personal income tax in the amount of \$10.00 for the year 1960.

Appellant Mary M. Rice appears as a party in this appeal only because she and her husband, Dwain G. Rice, filed a joint personal income tax return for 1960. Mr. Rice will be referred to hereafter as "appellant."

The question presented by this appeal is whether the claim for refund filed by appellant was barred by the statute of limitations.

On or about February 21, 1961, appellant and his wife filed a timely 1960 personal income tax return with respondent and paid the tax shown to be due. That return was prepared for them by a tax service in San Diego, California. In preparing appellant's 1960 return the tax service erroneously failed to exclude military pay of \$1,000 from appellant's gross income as authorized by section 17146 of the Revenue and Taxation Code.

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On June 10, 1966, respondent received a letter from appellant requesting a refund of the tax paid for 1960 which was attributable to the \$1,000 military pay erroneously included in his 1960 gross income. In that letter appellant stated that the tax service which had prepared his 1960 return had been attempting to recover the overpayment for him since 1961.

Respondent disallowed appellant's claim for refund on the ground that it had not been timely filed. This appeal was taken from that action,

Appellant contends that the tax service had twice requested a refund of appellant's overpayment, once in 1961 and again in 1962, but respondent had made no reply to either of those requests. Appellant also states that he personally called respondent for assistance in the matter, in March 1963 and in February 1964, but was told by respondent that it could not help him,

Respondent states that it has carefully checked appellant's files and it finds no record of anything which could constitute a claim for refund, prior to the letter received from appellant on June 10, 1966. Respondent further states that the file contains no correspondence, from the tax service or anyone else, concerning appellant's 1960 tax overpayment.

The governing portion of section 19053 of the Revenue and Taxation Code provides:

No credit or refund shall be allowed or made after four years from the last day prescribed for filing the return or after one year from the date of overpayment, whichever period expires the later, unless before the expiration of the period a claim therefor is filed by the taxpayer,

....

In the instant case the last date on which appellant could have filed a timely claim for refund of his 1960 tax overpayment was April 15, 1965, four years after the last day prescribed for filing his 1960 return. Appellant has offered no evidence to substantiate his allegations as to the attempts made both by him and by the San Diego tax service to obtain a refund of appellant's tax overpayment for 1960. As a result there is no proof that any claim for refund was filed by him or the tax service prior to June 10, 1966.

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Therefore, we have no choice but to follow the mandate of section 19053 and to declare that appellant's claim for refund was barred by the statute of limitations,

O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED; pursuant to section 19060 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claim of Dwain G. and Mary M. Rice for refund of personal income tax in the amount of \$10.00 for the year 1960, be and the same is hereby sustained.

Done at Sacramento , California, this 7th day of August , 1967, by the State Board of Equalization.

Paul R. Leake, Chairman  
John W. Lynch, Member  
John W. Lynch, Member  
Paul W. Leake, Member  
\_\_\_\_\_, Member

ATTEST:

John W. Lynch, Secretary